



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Inland Service Corporation

File: B-282272

Date: June 21, 1999

Johnathan M. Bailey, Esq., Law Offices of Theodore M. Bailey, for the protester.
Capt. Patricia A. McHugh, and Lt. Col. Holly M. Stone, Department of the Air Force,
for the agency.

Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Agency reasonably downgraded protester's proposal under past performance factor based on past performance information provided by protester's reference for contract that was similar in scope to current requirements, where information showed several performance deficiencies and reference stated it would not renew an option under protester's contract.

DECISION

Inland Service Corporation protests the award of a contract to U.S. Grounds Maintenance, Inc. (UGM), under request for proposals (RFP) No. F48608-99-R-0002, issued by the Department of the Air Force for grounds maintenance at F.E. Warren Air Force Base (AFB), Wyoming. Inland maintains that the award was improper because the agency's evaluation of its past performance was flawed.

We deny the protest.

The RFP provided for award of a fixed-price requirements contract for 6 months, with five 1-year options, to the responsible firm whose offer was found most advantageous to the government, considering past performance and executed proposal documentation which, combined, were approximately equal in importance to price. RFP § E, at 33. The performance-price tradeoff (PPT) technique was to be used to arrive at a best value award decision. *Id.* Application of this technique involves determining the acceptability of each offeror's proposal, ranking all acceptable proposals by evaluated price, and assigning the proposals a performance risk assessment rating of low, moderate, high, or not applicable. *Id.* The RFP advised that, although the agency reserved the right to conduct discussions if necessary, it

planned to make award on the basis of initial proposals. Federal Acquisition Regulation (FAR) § 52.212-1 (incorporated, with tailoring, in RFP at 32).

Thirteen proposals, including Inland's and UGM's, were received, and all were determined acceptable. Inland's proposal was third low at \$5,410,928.80, while UGM's was fourth low at \$5,749,638.36. (The lowest and second low offerors both received high performance risk ratings.) Agency Report, encl. 7, at 3-5. In assessing Inland's past performance risk, the Air Force called the contracting officer at Goodfellow AFB in Texas, one of the references listed in Inland's proposal, where Inland recently had performed a grounds maintenance contract with requirements similar to those here. She declined to complete a past performance questionnaire because there was an outstanding claim by Inland concerning that contract, but did forward the 11 contract discrepancy reports (CDR) issued under the contract during the period from July 14, 1997 to March 3, 1998, Inland's written responses to the CDRs, and the government's final actions on the CDRs, which included several deductions (totaling \$2,772.85) from Inland's contract payments. She also stated that Goodfellow AFB had decided not to exercise the third option under Inland's contract. Based on this information, the agency assigned Inland's proposal a moderate risk rating. Memorandum of Law at 3-4. UGM's proposal received a low risk rating, and the agency determined that this rendered UGM's proposal the best value despite its higher price. Agency Report, encl. 7, Price Analysis Report, at 6.

PAST PERFORMANCE EVALUATION

Inland argues that assigning Inland's proposal a moderate risk rating was unreasonable, since it was based on only one reference involving CDRs amounting to only \$2,772.85 on a contract exceeding \$1 million, that reference did not even complete a questionnaire, and a number of the questionnaires completed by Inland's other references indicated that Inland did not present a performance risk.

An agency's evaluation of past performance may be based on its reasonable perception of inadequate prior performance, even where the contractor disputes the agency's interpretation of the facts. Quality Fabricators, Inc., B-271431, B-271431.3, June 25, 1996, 96-2 CPD ¶ 22 at 7. We will question the agency's conclusion in this regard only where it is not reasonably based or is undocumented. PMT Servs., Inc., B-270538.2, Apr. 1, 1996, 96-2 CPD ¶ 98 at 6.

The evaluation of Inland's past performance was reasonable. While the Goodfellow AFB contracting officer declined to complete a questionnaire in light of Inland's pending claim, the CDRs show many instances where Inland failed to mow or trim the grass to the height specified in the contract, to irrigate the land such that the grass was brown and withered, or to maintain the grass as required by the contract specifications.

The solicitation allowed the agency to employ several approaches in determining a firm's past performance risk, including the use of questionnaires and "using data independently obtained from other government and commercial sources." RFP § E, at 34. Thus, the absence of a questionnaire did not preclude the agency from considering the Goodfellow AFB information. Further, while the dollar value of the deficiencies under that contract may have been small in relation to the total contract value, and while the agency ultimately reduced several of the deductions from Inland's contract payments, the deficiencies nevertheless reflect on the manner in which Inland performed the contract and, thus, validly could be considered by the agency in evaluating the firm's past performance. Finally, while Inland received several favorable references, there was no requirement that the agency accord those references greater weight than the Goodfellow AFB information. Rather, the agency reasonably could conclude, as it did, that any evidence of good past performance was tempered by the performance deficiencies at Goodfellow AFB, such that the proposal should receive something lower than the highest available rating. This is particularly the case given that Goodfellow AFB was one of Inland's more recent contracts, and involved services similar to those required here, while many of the other references were for contracts not solely for grounds maintenance services.¹

TRADEOFF

Inland argues that it is unreasonable for the agency to pay a price premium of \$300,000, in light of the fact that the CDRs under its Goodfellow AFB contract resulted in deductions totaling only \$2,772.85. This argument is without merit. First, the argument is based on the flawed premise that a low dollar value for deductions under an offeror's prior contract necessarily reflects high quality past performance. In fact, we think an agency reasonably may conclude that the quantity and types of deficiencies are more significant than the dollar value of deductions, and that a reduced past performance rating therefore is warranted despite few deductions. Moreover, there is no requirement that agencies base a source selection tradeoff on a

¹Inland asserts that the Goodfellow AFB contracting officer told Inland in a pre-protest conversation that she told the individual who contacted her from Warren AFB that Inland was still performing on Goodfellow's refuse contract and was "the best contractor Goodfellow has ever had." Comments at 6-7. This statement is uncorroborated in the record. Even if correct, however, this information concerned a refuse contract, not grounds maintenance. As indicated, the agency determined--reasonably, we think--that grounds maintenance contracts should be accorded the greatest weight in the past performance evaluation. This being the case, the agency reasonably could conclude that the deficiencies under Inland's Goodfellow AFB grounds maintenance contract warranted a less favorable performance risk rating, notwithstanding the quality of Inland's performance of the refuse contract.

comparison of the dollar value of deductions under an offeror's prior contracts with the price premium involved in making award to another contractor. Rather, agencies may make reasonable price/technical tradeoffs consistent with the RFP. GTE Hawaiian Tel. Co., Inc., B-276487.2, June 30, 1997, 97-2 CPD ¶ 21 at 16-17. The RFP here advised offerors that the agency would make a tradeoff under the PPT technique if the low offeror did not receive a low performance risk rating. RFP § E, at 33. The Air Force did this and specifically determined that Inland's performance problems under the Goodfellow AFB contract created a moderate risk of performance problems under this contract, and that UGM's somewhat higher price (approximately \$31,000 in the base year and \$61,500 in the 4 option years) was a reasonable amount to pay for increased assurance of receiving satisfactory or better performance. Agency Report, encl. 7, Price Analysis Report, at 6. See USA Elecs., B-275389, Feb. 14, 1997, 97-1 CPD ¶ 75 at 3-4. This tradeoff was based on the factors under the RFP, and we find nothing unreasonable in an agency's paying a premium to avoid a greater risk of unsatisfactory performance.

DISCUSSIONS

Inland maintains that the agency should have discussed with Inland its concerns over the firm's performance of the Goodfellow AFB; Inland claims it was not afforded a meaningful opportunity to respond to, explain, or comment on those concerns, as required by procurement regulations.

There generally is no obligation that a contracting agency conduct discussions where, as here, the RFP specifically instructs offerors of the agency's intent to award a contract on the basis of initial proposals. Robotic Sys. Tech., B-278195.2, Jan. 7, 1998, 98-1 CPD ¶ 20 at 11. While the contracting officer's discretion in deciding not to hold discussions is not unfettered, it is quite broad and has been expanded in recent years. Id. Our Office will review the exercise of such discretion to ensure that it was reasonably based on the particular circumstances of the procurement. Id.

There are no circumstances here that call into question the agency's decision not to engage in discussions. Inland's and the awardee's past performance information was well-documented, and the price difference between the proposals was not extreme. Since the information available to the agency was sufficient to enable it to differentiate between the firms' proposals in its selection decision, the agency's decision not to conduct discussions was reasonable. Inland's position that the agency should have provided it an opportunity to comment on its Goodfellow AFB contract performance is based on a provision of the FAR--§15.610(c)(6)--which was deleted from the FAR in October 1997 (well before the solicitation here was issued), and thus has no effect. While FAR §15.306(a)(2) (which concerns "Clarifications and award without discussions") provides that "offerors may be given the opportunity to clarify

certain aspects of proposals,” including past performance information, there is no requirement that agencies provide such an opportunity.² See Rohmann Servs., Inc., B-280154.2, Nov. 16, 1998, 98-2 CPD ¶ 134 at 8.

UNEQUAL TREATMENT

Inland seems to contend that it was treated unfairly vis-à-vis the awardee, which also received multiple CDRs from a particular reference, Offutt AFB, but did not have its risk rating downgraded. This argument is without merit. First, notwithstanding the CDRs, Offutt AFB stated in its completed questionnaire that it considered the awardee to be an excellent contractor to which it would make award again. Specifically, this reference indicated that despite “[m]inor CDRs for minor incompletions,” there was “never a major problem,” the “situations [were] corrected immediately,” and UGM’s performance was “excellent considering the scope of the contract.” Agency Report, encl. 10. Further, three of UGM’s four references rated the firm’s performance exceptional (the fourth was fully satisfied and reported no problems), two of UGM’s prior contracts involved similarly-sized Air Force bases, and all of the firm’s experience was in the grounds maintenance area. The agency found that all of these factors indicated low performance risk. Given the high quality of UGM’s references, we find nothing unreasonable in the agency’s determination that UGM’s past performance was superior to Inland’s.

The protest is denied.

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²In any case, we note that the record shows Inland was well aware of the specific deficiencies under the Goodfellow AFB contract. Indeed, Inland contested the deficiency notices and, as indicated, was pursuing a contract claim at the time the Air Force was gathering performance information for the past performance evaluation.